IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.120 OF 2004

Subash Arjandas Kataria of)
Mumbai, Indian inhabitant,)
carrying on business in the)
name and style of M/s.Liberty)
Optics & Exports, as sole)
Proprietor thereof, having his)
principal place of busines at)
104, A.N. Chambers, 130, Turner)
Road, Bandra (West),)
Mumbai-400 050)..PETITIONER

Versus

1.The State of Maharashtara)
through Government Pleader)
P.W.D. Building, Ground Floor)
High Court, Mumbai.)
2.The Inspector of Legal)
Metrology, Bandra Division,)
60, Hill Road, Bandra (West),)
Mumbai-40-0 050.)
3.The Deputy Controller of Legal)
Metrology, Mumbai, having)
his office at 601, Arun)
Chambers, 6th Floor, Tardeo)
Road, Mumbai-34.)..RESPONDENTS

Mr.Vikram Nankani with Mohd. Akram i/b. Harilal Thakar & Co., for the Petitioner.
Mr. K.R. Belosey, AGP for Respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 5th May,2006

JUDGMENT (PER F.I. REBELLO, J.):

. Petitioner is engaged in the business of trading in Sun Glasses and has a counter on commission basis at Globus Stores, Bandra. On 17th

October, 2003 the 2nd respondent visited Globus Stores and under a panchnama seized 5 sun glasses belonging to the petitioner for violation of the provisions of the Rules framed under the provisions of Standards of Weights & Measures Act 1976 (which hereinafter shall be referred to as the Act), which are known as the Standards of Weights & Measures (Packaged) Commodities Rule 1977, which hereinafter are to be referred to, as the Rules. There is yet another Act known as the Standards of Weights & Measurements (Enforcement) Act, 1985 which hereinafter shall be referred to as the Enforcement Act. On 22th October, 2003 as per the pleadings in the petition the Respondent No.2 along with other officers visited the office premises and handed over a show cause notice in Proforma "A" calling on the petitioners to compound the offence and simultaneously coerced and compelled the petitioner to write a letter for compounding of the offence under Section 65 of the Enforcement Act. At the same time they also compelled the petitioner to hand over to them a blank cheque of not over Rs.5000/-. The petitioner’s further case is that vide his Advocates letter dated 27th October, 2003 and after recording the facts set out earlier, recorded that

the letter of request written on 20th October, 2003 was not written voluntarily nor of free will but under duress and that the blank cheque was obtained improperly and illegally. By letter dated 27th October, 2003 the petitioner requested the respondent No.2 to vacate the order of seizure and return the sun glasses and other articles and the blank cheque. As the Respondents did not return the sun glasses nor vacated the seizure a reminder was sent on 14th November, 2003. The respondent No.2 by letter dated 17th November, 2003 without reference to the letters addressed to the Respondent No.2 by his Advocate’s letter communicated to the petitioner that the Deputy Controller of Legal Metrology, the Respondent No.3, had accepted the letter of compounding and while endorsing a copy of the impugned order dated 30th October, 2003 ordered the petitioner to pay an amount of Rs.3,000/- as compounding fee.The respondent No.2 also returned the blank cheque to the petitioner. It is the case of the petitioner that this entire action is arbitrary, illegal and unconstitutional, perverse, capricious without and/or in excess of jurisdiction and without and/or in excess of authority.

2. The petitioner's contention is that at the time of receiving the sun glasses from suppliers, the same are packed in individual polythene bags for protection and some of them are put in single carton. The same are received in individual openable pouch or case. Some of them are received with respective declaration affixed to the packaging. All the sun glasses are kept on open display without Polythene bags or case or pouch in which they are supplied. The prospective customers individually have a look at them, then try them out to ascertain and find out the suitability, cosmetic and aesthetic value thereof and then decide either to purchase or not or leave the same as it is. The decision to purchase the sun glasses depends upon the personality, shape, size and other physical attributes of the concerned individual. There is no testing of sun glasses involved at this stage and the decision to purchase is based on the subjective elements and preferences which are consumer specific. Sun glasses not sold are once again put on display till the same are sold. After the same are selected by the prospective purchaser, the same are either placed in a case or pouch for protection and as a goodwill gesture. The sun glasses received

by them are not necessarily supplied in an individual case or pouch. The sun glasses sold by the purchasers are therefore, placed in cases or pouches procured separately by the petitioner. Before sale to the consumers the sun glasses are not sealed and/or not packed in the absence of the consumers. The sun glasses are kept on open display for sale and are not put in cases in the absence of the customer.

3. A reply has been filed by the Assistant Controller of Legal Metrology. It is set out that the Respondent No.3 is authorised to compound the offences which are compoundable under the provisions of Section 65 of the Enforcement Act. The respondent No.3 is also authorised to hear the representation made by the aggrieved persons against any order or decision of respondent NO.2. Respondent No.2 Inspector, has taken action under the provisions of the Enforcement Act read with the Rules. It is set out that on a routine inspection of Globus Stores Pvt. Ltd. several goods which are a commodity in packaged form, as defined under Section 2(b) of the Standards of Weights & Measures Act, 1976 read with the definition of prepacked

goods were seized. The petitioner voluntarily gave consent for compounding the offence. The object of the Act, it is set out, are for consumer protection in respect of origin of goods, as well as indication of price on the packed commodity to prevent cheating. The Act and the Rules provide, that in respect of packed commodities, in pursuance of recommendations of the International Organisation of Legal Metrology, on the packet net quantity by weight, measure or number, the identity of the commodity contained therein, the name of the manufacturer and the price of the package should be indicated. It is then set out that Globus Stores Pvt. Ltd., has already compounded the offence and paid compounding fee of Rs.25,000/-. It is denied that there was any coercion exercised on the petitioner to write the letter for compounding the offence. It is also denied that the petitioner was compelled to hand over a blank check of over Rs.5,000/-. The show cause notice was given in the normal course and the petitioner had agreed to compound the offence voluntarily. The order to compound was made on 30th October, 2003 and the petitioner was required to pay Rs.3,000/- as compounding fee. The question of the petitioner,

therefore, giving a cheque for Rs.5,000/- as set out is false. The compounding order, it is set out, was made on 30th October, 2003. The letter of 20th October, 2003 was received on 21st October, 2003. The Advocate's letter dated 27th October, 2003 was received in the office of Respondent No.2 on 28th October, 2003 as well as the letter addressed to the respondent No.3 which was properly forwarded to respondent NO.3. The letter of 27th October, 2003 was addressed only to respondent No.2 and not to respondent No.3. It is, therefore, set out that the petitioner has failed to make out a case and consequently the petition should be dismissed.

4. The submissions on behalf of the petitioner are as under:-

(a). Section 1(3)(c) of the Act provides that the different provisions of the Act shall come into force in relation to class of goods with effect from the notified date as notified by Notification in the official gazette. No such notification has been issued in respect of sun glasses by the Central Government under Section 1(3)(c) of the said Act. Similarly there is no notification issued under the

Enforcement Act and/or Rules and as such the provisions of the Act, the Enforcement Act and the Rules are not applicable to the Sun Glasses.

(b). Section 31 of the Act read with Section 33 of the Enforcement Act applies to the goods which are sold or distributed by weight, measure or number. Sun glasses are sold neither by weight, measure nor number and as such the provisions of Section 39 of the Act which are also applicable to inter State trade by virtue of Section 33 of the Enforcement Act are also not applicable and thereby no declaration of the retail sale price or any other details, as required under Section 39 of the Act are required to be declared on the sun glasses. The Act and the Rules, it is submitted are applicable to those commodities which are incapable of sale in any manner other than in a packaged form and the law in question has no application to packages which are packaged only for the convenience of the customers for the purpose of safe transportation and for protection during the storage and handling.

5. We have heard learned Counsel for the parties. It may be pointed out that by Notification

dated 26th September, 1977 the Central Government under Section 3 (1) of the Act appointed 26th September, 1977 as the appointed date for enforcing the provisions of Sections mentioned therein particularly Sections 1, 2 and 3 and Sections 39 and 83. Under Section 83 of the Act, the Central Government is empowered to make Rules in respect of packaged commodities. Accordingly, Rules have been made dated 26th September, 1977 covering all packaged commodities.

. Section 1(3) of the Act sets out that it shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different (a) provisions of this Act, (b) areas, (c) classes of undertakings, (d) classes of goods, (e) classes of weights and measures, or (f) classes of users of weights and measures. In other words what it implies is that the provisions of the Act may be made applicable by notification on one day and/or different dates may be fixed for different provisions of the Act to come into force for various areas, classes of undertakings, etc., as set out earlier. In the instant case the Notification dated

26th September, 1977 has brought into force the various provisions as set out therein viz. Sections 1, 2, 3 and 39 as also 83. Once those sections have come into force, there is no requirement that there must be a different notification specifying the different dates for different provisions of the Act to be brought into force for various areas, etc. The submission, therefore, made on behalf of the petitioner that different dates have to be notified for various areas, classes of undertakings, etc., is devoid of merit considering the notification. All prepackaged commodities covered by the Act and the Rules, will be governed by the Sections which have been brought into force to the extent applicable. This is made further clear by the Rules. Rule 2-A of the Rules makes it clear that the provisions of the Chapter II applies to all pre-packed commodities except in respect of grains and pulses containing a quantity of more than 15 Kg. Rule 3 sets out that the provisions of the Chapter shall apply to the packages intended for retail sale and the expression 'package', wherever it occurs in this Chapter, shall be construed accordingly. To that extent the first submission as advanced on behalf of the petitioner must be rejected.

6. We then come to the second contention and for that purpose the various definitions which are relevant are being set out. Section 2(b) reads as under:-

"2(b) "commodity in packaged form" means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail."

Rule 2(l) defines that:-

> "pre-packed commodity with its grammatical variations and cognate expressions, means a commodity or article or articles which, without the purchaser being present, is placed in a package of whatever nature, so that the quantity of the product contained therein has a predetermined value and such value cannot be altered without the package or its lid or cap, as the case may be, being opened or undergoing a perceptible modification, and the expression 'package', wherever it occurs, shall be construed as a package containing a pre-packed commodity."

> Explanation (1) Where, by reason merely of the opening of a package, no alteration is caused to the name, quantity, nature or characteristic of the commodity contained therein, such commodity shall be deemed, for the purposes of these rules, to be a pre-packed commodity, for example, an electric bulb or fluorescent tube is a pre-packed commodity, even though the package containing it is required to be opened for testing the commodity;
>
> Explanation II:.....

. It would thus be clear from this definition that to fall within the expression of pre-packed commodity the article or articles must be placed in a package of whatever nature, so that the quantity of the product contained therein has a predetermined value and cannot be altered without the package or its lid or cap, as the case may be being opened or undergoing a perceptible modification. These are the criteria which will have to be applied before the article can be said to be packed commodity.

7. Considering the definitions in the Act and

the Rules, the question really would be, whether sun glasses can be said to be an item which is a pre-packed commodity. The petitioner has averred that the articles come to him either in polythene bags and some in individual openable pouch. Sometimes at the time of delivery they are put in a pouch which are normally on display for the customers to identify for the purpose of purchase. The package, therefore, is only a package for protection or safety of the article. Can therefore, sun-glasses be said to be a pre-packed commodity. The value of the product here sunglasses whether inside the package or outside the package does not alter if the package is opened nor does it undergo a perceptive modification on the package being opened. The question of explanation 1, applying also will not arise as there is no testing and as the product need not be individually packed before the customer intends to buy it. The testing if at all by an individual who intends to purchase a sunglass is for the purpose of determining whether he should purchase the article considering his requirement, at which point of time the article is never in a package.

8. Let us examine the judgments relied upon by the petitioner as also the Respondents to examine whether the view is supported by the judgments cited. Reliance was placed by the respondent on the judgment in the case of **M/s.T.T. (Pvt.) Ltd. vs. Union of India & Ors., AIR 1991 Karnataka 79**. The issue there was the validity of the Act. We are really not concerned with that issue in the instant case. That judgment would, therefore, be of no assistance in deciding the controversy. The learned Counsel, however, has also drawn our attention to the definition of "package" as considered by a learned Judge of this Court in **M/s.Valimahomed Gulamhussain Sonavala & Co. v. C.T.A. Pillai, Addl. Collector of Customs and Ors., AIR 1961 Bom.48**, where the definition of "package" and other provisions of the Customs Act was being considered. After considering the various definitions reference was made to the definition of word ’package’ in Murray’s Dictionary Vol.VII, page 362 which defines a "package" as a bundle of things packed up and contained in a receptacle. We will consider as to what extent that is relevant for the purpose of our discussion considering the definition in the Act, the Enforcement Act and the Rules.

. Learned Counsel for the petitioner, however, has relied on the judgment in the case of **Philips India Ltd. vs. Union of India & Ors., 2002 Writ L.R. 140.** A learned single Judge of the Madras High Court was considering a prayer for declaration that the provisions of the Act are not applicable to television sets, audio visual equipments and electronic items. The learned single Judge has dealt exhaustively with scientific terms in the field of electronics. The learned Judge has also considered a contention advanced on behalf of the petitioners that the Act and the Rules will have no application to packages which are packed only for the convenience of the customers for the purpose of safe transportation and for protection during storage and handling. The learned Judge considering the expression "pre-packed commodity" observed as under:-

> "Expression "Pre-packed commodity", in my considered view, would mean and include a commodity which is placed in a package of whatever nature so that the quantity or product contained therein has a pre-dermined

value and contents of such carton cannot be altered without the package or its lid or cap, as the case may be being opened or undergoing a perceptible modification." This judgment was considered by a learned single Judge of the Andhra Pradesh High Court in an unreported judgment in Eureka Forbes Limited vs. Union of India & Ors., decided in Writ Petition No.6547 of 1997 on 7th February, 2003. The learned Judge in respect of vacuum cleaners was pleased to hold that the commodity in packaged form must be salable only in packaged form and not otherwise. Dealing with the vacuum cleaner the Court held that the outer case box or carton is not a package as defined in the Act and the Rules. The package is not sealed and it is not intended to be a sealed package. The customer is entitled to remove the product from the cardboard box, inspect and handle, and then test the performance before buying the same. The Court then held that they are not sold by weight, measure, or number at all and they are only sold as single piece. The learned Judge thereafter proceeded to

observe as under:-

> "In fact, the Act is not intended to cover all the manufactured goods kept in the packages, but limited to the packaged commodity, which are being sold by weight, or measure, or numerals, which are being sold in the packed form without unpacking such packaged commodity at the time of sale".

Learned Counsel has also relied on a judgment of another Judge of the Andhra Pradesh High Court in Titan Watches Limited, Bangalore vs. Senior Inspector, Legal Metrology Weights & Measures Department, Mehboobnagar & Ors. AIR 2003 A.P.175. In that case the learned single Judge has held that in the absence of issuing notification covering watches, the Act would not apply. In our opinion we cannot agree with the said view considering what we have held while answering issue No.1.

9. From the above discussion, considering the provisions referred to earlier, it would be clear that the Expression, pre-packaged commodity would be

applicable to commodities which are packed and the commodity packaged has a pre-determined value and that value cannot be altered without the package sold being opened at the time of sale or the product undergoes a modification on being opened. In the instant case the sun glasses whether they come in a box or not in so far as the retailer is concerned at the time when they are being sold to the consumer are not in a packaged form. Even if it is held that they come in a packaged before they are sold to the consumer by removing them from the box, the value does not alter nor does the product undergo a perceptible modification. The explanation is also not attracted because the package is not opened for the purpose of testing as in the case of electronic bulbs. The sunglasses are tested by the buyer for his suitability. We are, therefore, of the considered opinion that sun glasses whether it be a frame or glass is not a pre-packed commodity within the definition of the expression "pre-packed" under Rule 2(l) of the Rules.

. The action of the respondents, therefore, in issuing the notice was without the authority of law. There is a dispute raised by the petitioner as the

voluntariness of the letter which was written regarding the seizure and the desire the compound. Even if that may raise a disputed question of fact in terms of the record, in our opinion, the entire action in seizure was without the authority of law as the Act, the Enforcement Act and the Rules were not applicable. Once that be the case the petition will have to be allowed.

. In the light of that Rule made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.

(F.I.REBELLO, J.)

(ANOOP V. MOTHA J.)